

CRIMINAL REVISION APPLICATION No 504 of 1997

Hon'ble MR.JUSTICE A.K.TRIVEDI

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5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

Versus

STATE OF GUJARAT

MR AJ DESAI APPfor Respondent No. 1

Date of decision: 04/04/98

2. Being aggrieved and dissatisfied by the order passed by learned Additional Sessions Judge, Kheda at

Nadiad dated 5.6.1997 in the matter of Criminal Revision Application No.89 of 1996, the petitioners have filed the present Revision Application.

3. The petitioners No. 1 to 4 are the original accused of Criminal Case No. 2340 of 1990, pending in the court of learned JMFC, Khambhat, District Khedha. It may be noted that the petitioners are facing prosecution under Sections 323, 341, 504 read with 114 of the IPC. That pending the further trial, prosecution moved the application to the court under Section 216 of the Cr.PC to alter the charge and to add charge in respect to the offence made punishable under Section 324 of the IPC. Learned JMFC heard the said Application and vide order dated 12th January, 1996 rejected the application. That respondent - State of Gujarat carried the matter to the Sessions Court, Kheda at Nadiad against the said order of learned JMFC by filing Criminal Revision Application No. 89 of 1996. That after hearing the parties, learned Additional Sessions Judge, Kheda, decided the revision application vide impugned order and allowed the same. It is noteworthy that learned Addl. Sessions Judge has directed the trial court to add charge under Section 324 of the IPC and further directed to permit cross examination of witnesses already examined if claimed on behalf of the petitioners.

3. Learned Advocate Mr. B.P. Munshi appearing for the petitioners has contended that impugned order of learned Additional Sessions Judge is illegal, improper and contrary to the provisions of law and thereby cannot be sustained. It is submitted that offence made punishable under Section 324 is triable under the procedure prescribed for warrant triable cases. That learned JMFC had proceeded with the trial initially under the procedure prescribed for summons triable cases and thereby by addition of charge under Section 324, the entire nature and complexion of the case would be changed. That as prescribed under Section 259 of the Cr.PC 1973, on alteration of charge particularly when offence is added, which is warrant triable, a de novo trial is necessary. That direction given by learned Additional Sessions Judge is illegal, improper and contrary to the provisions of law and requires to be set aside and modified. To support the submission, Shri Munshi has referred to and relied on observations made by the Supreme Court in the matter reported in AIR 1954 SC 266.

4. Learned APP Mr. Desai has taken me through the impugned order, which is produced on record vide Annexure

- A on running page 12 to 17 and has submitted that substantially the learned Sessions Judge has directed the trial court to give opportunity to the accused to cross examine the witnesses of the prosecution, as such no injustice is likely to be caused.

5. It may be noted that there is a distinction between procedure prescribed for summons triable cases and warrant triable cases. That under Section 259, if during the course of trial of a summons case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant cases and may recall any witness who may have been examined.

6. In view of the above stated provision prescribed under Section 259 of the Cr.PC 1973, in my opinion, the impugned Order is contrary to the said provision and procedure required to be followed. However, Shri B.P. Munishi, learned Advocate appearing for the petitioner has fairly stated at the Bar that petitioners do not raise any dispute so far as addition of charge in respect to offence made punishable under Section 324 of the IPC is concerned. Under the circumstances, the impugned order is required to be set aside and modified so as to make it in consonance with the provisions of law.

7. On the basis of the above stated discussion, Criminal Revision Application No. 504 of 1997 is partly allowed. The impugned order passed by the learned Additional Sessions Judge, Kheda at Nadiad dated 5.6.1997 in the matter of Criminal Revision Application No. 89 of 1996 is hereby set aside and modified as under :

"The court of learned JMFC, Khambhat is directed to add the offence made punishable under Section 324 of the IPC as a part of pending prosecution to Criminal Case No. 2340 of 1990. The learned JMFC, Khambhat is further directed to frame charge and follow the procedure prescribed under Section 259 of the Cr.P.C. 1973 and to decide the matter in accordance with law. Rule is made absolute accordingly. No order as to costs. Interim relief granted earlier stands vacated.

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p.n.nair

